IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 220 OF 2006

M/s. S.V. Jewells and ors. ....Applicants.

V/s

M/s. A Himanshu & Co. & Anr. ....Respondents.

Mr. Shirish Gupte with Mr. Amit Datye i/b Ms. Archana Deshpande for the applicants.

Mr. M.S. Mohite for respondent No.1.

Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 20th March, 2006

P.C.:

1. Heard the learned Counsel for the Petitioners, the learned Counsel for respondent No.1 and the learned APP for the State.

2. The petitioners take exception to the order dated 12/1/2006 passed by the Sessions Court for Greater Bombay in Criminal Revision Application No. 1532 of 2005. The said Criminal Revision Application was filed by the petitioners herein, challenging the order passed by the Metropolitan Magistrate whereby the

petitioners were directed to be added as accused in the Criminal Complaint filed by respondent No.1, by exercising powers vested in the Magistrate under section 219 of the Criminal Procedure Code.

3. The learned Counsel appearing on behalf of the petitioners invited my attention to the observations made by the learned Sessions Judge in the said order in which he held that the ratio of the judgment in the case of S.M.S. Pharmaceuticals Ltd Vs. Neeta Bhalla & Anr. reported in 2005(2) Bom.C.R. (Cri.) 696 was applicable only in relation to the Company and it can be extended in relation to a firm only in relation to section 141(2) of Negotiable Instruments Act and not beyond that. He submitted that the said observation made by the Sessions Judge is legally incorrect. He submitted that the law laid down in the case of S.M.S. Pharmaceuticals Ltd (supra) was equally applicable to the partnership firms.

4. The learned Counsel appearing on behalf of the respondent No.1, however, on the other hand, submitted that the said observations have been made only with reference to the submissions which were made by the learned Counsel appearing on behalf of the petitioners.

5. I am unable to agree with the said submission made by the learned Counsel appearing on behalf of the respondent No.1. It is a well settled position in law that the judgment in the case of S.M.S. Pharmaceuticals Ltd. (supra) is applicable not only to registered companies but also to partnership firms. The observation made by the Sessions Judge, therefore, in my view is legally incorrect and, on this ground alone, the said judgment and order is set aside. The Sessions Court has rejected the Criminal Revision Application on this point alone without taking into consideration the submissions made on behalf of the applicants on merits. In my view, it would be just, fair and appropriate that the matter is remanded back to the Sessions court to decide the same afresh on merits and in accordance with law.

6. Accordingly, the judgment and order passed by the Sessions Court dated 12/1/2006 in Criminal Revision Application No.1532 of 2005 is set aside. The matter is remanded back to the Sessions Court with direction to decide the Criminal Revision Application afresh and in accordance with law. All the questions raised by both the parties are kept open. The Revisional Court is directed to decide the Criminal Revision

Application as expeditiously as possible and, in any case, within a period of two months. Needless to state that during the pendency of the Criminal Revision Application, the trial is stayed.

7. Application is disposed of in the above terms.

V.M. KANADE, J.